IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3769 of 2001
With
SPECIAL CIVIL APPLICATION No. 3767 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HETAL DHARMESH PANDYA HEIR OF DHARMESH HARSHVADAN PANDYA - Petitioner(s)
Versus
COMMERCIAL CO-OPERATIVE BANK LTD. & 1 - Respondent(s)

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Appearance :

SCA No. 3769 of 2001.
MRS KETTY A MEHTA for Petitioner(s) : 1,
MR RAVINDRA SHAH for Respondent(s) : 1,
MR HASIT H JOSHI for Respondent(s) : 2,2.2.1

SCA No. 3767 of 2001.

MS ARCHANA C.RAWAL for Petitioner.

MS VINITA VINAYAK FOR M/S THAKKAR ASSOCIATES for Respondent.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 30/04/2007

COMMON JUDGMENT

1 Heard learned Advocates appearing for the respective parties. It is apparent that the dispute between the parties relates to the interest in the property in question for which Lavad Suit filed before the Board of Nominees is pending as of date. At the time of admission an interim order came to be made in the following terms :

> 1. Heard Ms. Mehta and Mr. Raval, for the petitioner, Mr. Ravindra Shah for the respondent No.1, Bank and Mr. Hasit Joshi for the respondent No.2 and Mr. Pahwa for Thakkar Associates.
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> 2. Ms. Mehta for the petitioner submits that as it was already contended by the petitioner in the written statement that the property of 8 flats of Bharadwaj Apartment, are already sold, to the petitioner prior to the institution of the suit. She submitted that the purchaser of the 8 flats, are neither impleaded as party nor they have been subsequently joined even after the written statement is filed.
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> In that view of the matter, it cannot be said that the petitioner-defendant is about to dispose of the property and therefore, the attachment before the judgment is called for.
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> 3. Mr. Shah, on the other hand for the Bank submitted that, the petitioner, if, is not holding any interest in the property, then she should not have any objection in allowing the attachment before the judgment to be continued, more particularly, when the she has already sold the property.
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> 4. Considering the facts and circumstances of the case, I am of the view that the matter requires the consideration hence rule.
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> By way of interim order, the order of attachment before judgment is stayed with further clarification that, it will be open for the respondent to move the fresh application for attachment before judgment after joining the 8 purchasers of the flats as party and it

> will be open to the Ld. Nominee to pass any order in accordance with law.
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> 5. With regard to Spl.C.A.No. 3767 of 2001, by way of interim order, the present status of all the flats, including the seal will continue, but the order qua the sale of the property is stayed. It will be open to the bank to move a fresh application for the attachment before judgment. It will also be open to the Bank to move the appropriate application for fresh interim order after joining the purchasers of the flats as party.
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> 7. Both the sides request that the suit may be expedited and therefore, considering the facts and circumstances of the case, the Ld. Nominee to decide the suit as early as possible preferably within a period of 6 months from today."

2 Today when the matters have been called out, the learned Advocate for the petitioner states that the Lavad Suit is yet pending and in the event the interim relief granted by this Court is permitted to continue to operate till disposal of the suit the parties would have no objection.

3 In the circumstances, without entering into any discussion into merits of the respective contentions of the parties, it is left open to the parties to raise all contentions of facts and of law before the Board of Nominees in the pending Lavad Suit. The interim relief granted by this Court vide order dated 22.4.2002 shall continue to operate during pendency of the Lavad Suit.

4 The learned Advocates for the parties pray for a direction to the Board of Nominees to proceed with the Lavad Suit at the earliest. It will be open to

the parties to move an appropriate application in this regard before the Board of Nominees. Needless to state that, in the event such an application is moved before the Board of Nominees the same shall be considered and acted upon in accordance with law.

5 The petitions are allowed accordingly in the aforesaid terms. Rule made absolute. There shall be no order as to costs. Registry to place copy of this judgment in cognate matter.

Sd/-
(D.A.Mehta, J.)

m.m.bhatt